UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, 1401 H Street, NW Washington, DC 20530 (202) 307-0829 Plaintiff, v. AMERICAN RADIO SYSTEMS CORPORATION 116 Huntington Ave. Boston, MA 10103 (617) 375-7500 and EZ COMMUNICATIONS, INC. 10800 Main Street Fairfax, VA 22030-8003 (703) 591-1000 Defendants.	:	No. 1:97CV00405 **COMPLAINT FOR INJUNCTIVE RELIEF AGAINST COMBINATION IN VIOLATION OF SECTION 7 OF THE CLAYTON ACT** Received: February 27, 1997 at 4:23 PM United States District Court District of Columbia

The United States of America, acting under the direction of the Attorney General of the United States, brings this action to prevent the proposed acquisition through merger of EZ Communications, Inc. ("EZ") by American Radio Systems Corporation ("ARS").

I. Nature of the Action

1. ARS is a large nationwide operator of radio broadcast stations that owns seventy-five radio stations across the United States, including four located in the Sacramento metropolitan area. ARS has entered into several transactions in which it will be buying and selling a number of

radio stations in the Sacramento metropolitan area. As a result of those transactions, ARS would own four radio stations authorized and operating as class B FM radio broadcast facilities (hereinafter "Class B stations") in the Sacramento area.

2. ARS and EZ each own Class B FM radio stations in the Sacramento Area and compete for the business of local and national companies seeking to advertise in the Sacramento area through radio. The merger, if consummated, would eliminate price and service competition between these companies and the benefits resulting from this competition, and would result in many advertisers having to pay higher prices and receiving fewer services. Following the merger, ARS would own eight radio stations in the Sacramento metropolitan area, including six of the twelve Class B stations in Sacramento.

3. In addition, ARS's share of the radio advertising dollars in the Sacramento area would rise from about 21 percent to about 36 percent. Moreover, ARS would control Sacramento stations that account for a substantial amount of radio advertising to specific demographic groups. After this merger, radio advertisers seeking to target these demographic groups in Sacramento would have inferior alternatives to ARS, resulting in ARS having the ability to raise prices to these advertisers. Thus, as a result, these acquisitions would give ARS substantial market power in the Sacramento radio market. Neither the remaining Sacramento radio stations nor any new entry is likely to check effectively ARS's ability to exercise the market power it would obtain through this merger. Accordingly, the proposed acquisitions are likely to lessen competition substantially, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

II. Jurisdiction, Venue and Standing

4. This action is filed pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, and Section 4 of the Sherman Act, 15 U.S.C. § 4, to obtain equitable relief to prevent a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

5. ARS and EZ sell radio advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 4, 22, and 25, and 28 U.S.C. §§ 1331 and 1337.

6. Defendants have consented to plaintiff's assertion that venue in this District is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c).

III. Defendants

7. ARS is a Delaware corporation headquartered in Boston, Massachusetts. It owns or has agreed to acquire 75 radio stations located in 14 metropolitan areas in the United States, including the following four Class B stations in the Sacramento area: KSFM-FM, KYMX-FM, KQPT-FM and KSSJ-FM. ARS's Sacramento revenues in 1995 were approximately $15 million.

8. EZ is a Virginia corporation headquartered in Fairfax, Virginia. It owns twenty-three radio stations located in metropolitan areas in the United States, including the following two Class B stations in the Sacramento area: KNCI-FM and KRAK-FM. EZ's Sacramento revenues in 1995 were approximately $11 million.

IV. The Proposed Acquisition Is Likely To Reduce Competition Substantially in the Sacramento Market for Radio Advertising Time, in Violation of the Clayton Act

9. *Radio Advertising Time in Sacramento is the Relevant Market*. The relevant geographic market for local and national advertisers that buy time on the ARS and EZ radio stations in Sacramento is the Sacramento, California Metro Survey Area ("MSA"). This is the geographical unit for which Arbitron, a company that surveys radio listeners, furnishes radio stations, advertisers and advertising agencies in Sacramento with data to aid in evaluating radio audience size and composition. The Sacramento MSA includes four counties: El Dorado, Placer, Sacramento and Yolo. Local and national advertising that is placed on radio stations within the Sacramento MSA is aimed at reaching listening audiences in the Sacramento MSA, and radio stations outside of the Sacramento MSA do not provide effective access to this audience. Thus, if there were a small but significant non-transitory increase in radio advertising prices within the Sacramento MSA, advertisers would not switch enough advertising time purchases to radio stations located outside of the Sacramento MSA to defeat the increase.

10. Radio advertising time is sold by radio stations in Sacramento directly or through their national representatives. Radio stations in Sacramento generate almost all of their revenues from the sale of advertising time to local and national advertisers.

11. Many local and national advertisers purchase radio advertising time in Sacramento because they find such advertising preferable to advertising in other media for their specific needs. Reasons for this include the fact that radio advertising time may be less expensive and, on a per-dollar basis, more cost-efficient than other media at reaching the advertiser's target audience (individuals most likely to purchase the advertiser's products or services). Radio may also reach

certain target audiences that cannot be reached as effectively through other media. Additionally, radio stations render certain services or promotional opportunities to advertisers that they cannot exploit as effectively using other media. For these reasons, many local and national advertisers who purchase radio advertising time view radio either as a necessary advertising medium for them, or as a necessary advertising complement to other media.

12. Although some local and national advertisers may switch some of their advertising to other media rather than absorb a price increase in radio advertising time in Sacramento, the existence of such advertisers would not prevent all radio stations in Sacramento from profitably raising their prices a small but significant amount. At a minimum, stations could profitably raise prices to those advertisers who view radio as a necessary advertising medium for them, or as a necessary advertising complement to other media. Radio stations negotiate prices individually with advertisers, consequently, radio stations can charge different advertisers different prices. Radio stations generally can identify advertisers with strong radio preferences. Because of this ability to price discriminate among customers, radio stations may charge higher prices to advertisers that view radio as particularly effective for their needs, while maintaining lower prices for other advertisers.

13. The provision of advertising time on radio stations in the Sacramento MSA is a relevant market (*i.e.*, a line of commerce and a section of the country) within the meaning of Section 7 of the Clayton Act.

14. *The Transaction*. On August 5, 1996, ARS agreed to acquire EZ through merger for approximately $655 million.

15. *Market Structure Post-Acquisition*. The proposed merger would concentrate Sacramento's strongest radio signals into the hands of a single entity. After the merger, ARS would own six of the twelve Class B stations in the Sacramento area. Using a measure of market concentration called the Herfindahl-Hirschman Index ("HHI"), explained in Appendix A, the proposed transactions, described earlier, would substantially increase concentration in the Sacramento radio advertising market. ARS's share of the Sacramento radio advertising market, based on advertising revenues, would increase to about 36 percent. This correlates with an approximate post-merger HHI of 2893, representing an increase of 1205.

16. *Harm to Competition*. Because weaker signals cannot penetrate the entire listening area, they do not have the potential to reach as many listeners as strong signals. All else being equal, more concentrated ownership of strong signals may create more dominant listener shares than concentrated ownership of weaker signals. Advertisers who use radio to reach their target audience select radio stations upon which to advertise based upon a number of factors, including, inter alia, the geographic reach of a station's signal, the size of a station's audience and the characteristics of its audience.

17. Many advertisers seek to reach a large percentage of their target audience by selecting those stations whose audience has a high correlation with their target audience. If a number of stations efficiently reach that target audience, advertisers benefit from competition among such stations to offer better prices or services. Today, ARS and EZ stations in Sacramento compete head-to-head to reach the same audiences and, for many local and national advertisers buying time in Sacramento, they are good substitutes for each other based on their

specific audience characteristics. The merger would eliminate this competition, most critically affecting advertisers seeking to reach female listeners.

18. During individual price negotiations between advertisers and radio stations, advertisers provide the stations with information about their advertising needs, including their target audience and the desired frequency and timing of ads. Radio stations thus have the ability to change advertisers differing rates based in part on the number and attractiveness of competitive radio stations that can meet a particular advertiser's specific target needs.

19. During individualized price negotiations, advertisers that must reach female listeners can help ensure competitive prices by "playing off" EZ stations against ARS stations. ARS's acquisition of EZ will end this competition. In the absence of the EZ acquisition, advertisers seeking to reach females in Sacramento could efficiently reach this audience by using non-ARS stations. After the acquisition of EZ, such advertisers will be unable to reach these demographic groups with equivalent efficiency without using ARS stations. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give ARS the ability to raise prices and reduce the quality of its service to some of its advertisers on its stations in Sacramento.

20. The transaction would have the following effects, among others:

a. competition in the sale of advertising time on radio broadcast stations in the Sacramento MSA would be substantially lessened;

b. actual competition between ARS and EZ radio stations in the sale of radio advertising time would be eliminated; and

c. the prices for advertising on radio stations in the Sacramento MSA would likely increase, and services would likely decline.

21. *Lack of Any Likely Entry To Deter ARS's Ability To Harm Competition*. If ARS raised prices or reduced services to those advertisers who buy advertising time on ARS and EZ stations in Sacramento because of their strength in delivering access to certain audiences, non-ARS radio stations in Sacramento would not be induced to change their formats to attract those audiences in sufficiently large numbers to defeat a price increase. Successful radio stations are unlikely to undertake a format change solely in response to small but significant increases in price being charged to advertisers by a multi-station firm such as ARS because they would likely lose their existing audiences. Even if less successful stations did change format, they would still be unlikely to attract enough listeners to provide suitable alternatives to the merged entity.

22. New entry into the Sacramento radio advertising market is highly unlikely in response to a price increase by the merged parties. No unallocated radio broadcast frequencies exist in Sacramento. Also, stations located in adjacent communities cannot boost their power so as to enter the Sacramento market without interfering with other stations on the same or similar frequencies, a violation of Federal Communications Commission regulations.

23. The effect of the proposed transaction by ARS would be to lessen competition substantially in interstate trade and commerce, in violation of Section 7 of the Clayton Act.

V. Requested Relief

24. The plaintiff requests: (a) adjudication that ARS's proposed transaction would violate Section 7 of the Clayton Act; (b) preliminary and permanent injunctive relief preventing the consummation of the proposed transaction; (c) an award to the United States of the costs of this action; and (d) such other relief as is proper.

Dated: February 27, 1997

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APPENDIX A
HERFINDAHL-HIRSCHMAN INDEX CALCULATIONS

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and the summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty, and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. See *Merger Guidelines* § 1 51.